

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-534 (Sub-No. 2X)

LAKE STATE RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
ALPENA AND PRESQUE ISLE COUNTIES, MI

Decided: November 7, 2003

On May 22, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the Michigan Department of Natural Resources (MIDNR) to negotiate an interim trail use/rail banking agreement with Lake State Railway Company (Lake State) for a portion of Lake State's Huron Subdivision (the main line) extending northward from the U.S. Highway 23 crossing in Alpena (milepost 125.2) to the end of the main line just north of Metz, MI (milepost 151.25), and Lake State's entire Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at RCB milepost 11.5, a distance of 37.55 miles, in Alpena and Presque Isle Counties, MI. The negotiating period under the NITU was extended by decisions served on November 17, 2000, May 4, 2001, December 18, 2001, May 17, 2002, November 8, 2002, and May 23, 2003. The latest extension expired on November 3, 2003.

In the May 23, 2003 decision, the NITU negotiating period was extended, at the request of Lake State, only for the portion of Lake State's Huron Subdivision extending northward from the U.S. Highway 23 crossing in Alpena (milepost 125.2) to the end of the main line just north of Metz, MI (milepost 151.25), and Lake State's Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at milepost 6.7. The decision excluded from the NITU the portion of the right-of-way extending from milepost 6.7 to milepost 11.5 on the Rogers City Branch and stated that Lake State may fully abandon that portion, subject to meeting the conditions imposed in the May 22, 2000 decision. By decision served on August 8, 2003, Lake State's request to modify the May 23, 2003 decision to include interim trail use/rail banking for the portion of the right-of-way extending from milepost 6.7 to milepost 11.5 on the Rogers City Branch was granted.

By letter filed on November 5, 2003, Lake State requests an additional 180-day extension of the NITU negotiating period. According to Lake State, it is continuing negotiations with MIDNR and expects to complete an agreement within 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.¹ Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from November 3, 2003.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Lake State's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended until May 1, 2004.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

¹ See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).